

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ORDER NO. 86-32

AN ORDER PROHIBITING THE DISCHARGE OF
WASTES BEYOND THE LIMITS OF LANDS
OWNED OR CONTROLLED BY COLOR SPOT FOLIAGE INC.
NEAR FALLBROOK
SAN DIEGO COUNTY

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board) finds that:

1. On April 23, 1973, this Regional Board adopted Order No. 73-14, *An Order Prohibiting the Discharge of Wastes Beyond the Limits of Lands Owned or Controlled by Cal-Vine Nursery Near Fallbrook*. Order No. 73-14 was adopted in response to a complaint received by Regional Board staff on December 29, 1972 regarding an illicit discharge of wastewater beyond the property limits of Cal-Vine Nursery.
2. Order No. 73-14 established a time schedule for Cal-Vine Nursery to submit a Report of Waste Discharge by May 1, 1973 and to terminate the discharge of wastewater beyond the limits of lands owned and controlled by Cal-Vine Nursery by July 1, 1973.
3. As part of the 1985/1986 fiscal year Waste Discharge Order Update Program, Order No. 73-14 has been reviewed by Regional Board staff.
4. On April 2, 1973, Mr. James Duarte, Vice President, Cal-Vine Nursery, submitted a Report of Waste Discharge which was considered incomplete.
5. On May 23, 1973, Cal-Vine Nursery submitted an outline of a plan to be implemented to terminate the discharge of wastes beyond its property.
6. By letter dated June 21, 1973, Cal-Vine Nursery requested a 60-day extension from the July 1, 1973 deadline contained in Order No. 73-14. This request was granted.
7. By letter dated June 28, 1973, Cal-Vine Nursery submitted a revised plan to terminate the discharge of wastes beyond its property.
8. By letter dated July 9, 1973, Regional Board staff allowed Cal-Vine Nursery until August 27, 1973 to construct the facilities proposed in their June 28, 1973 letter and informed the Cal-Vine Nursery that if irrigation wastewater was not confined to their property limits by August 27, 1973, the Regional Board staff would recommend appropriate enforcement action.
9. On August 20, 1973 Regional Board staff inspected Cal-Vine Nursery to determine whether or not compliance with Order No. 73-14 would be achieved by August 27, 1973. During the inspection, it was noted that the discharge beyond the property limits had not been terminated and that

construction of the proposed facilities would not be completed by August 27, 1973. In a letter dated August 22, 1973 Regional Board staff informed Cal-Vine Nursery of its intent to discuss enforcement action against Cal-Vine Nursery at the August 27, 1973 Board meeting.

10. During the August 27, 1973 Regional Board meeting, Cal-Vine Nursery reported that construction and operation of the waste disposal system would be complete in two weeks. The Regional Board subsequently accepted this date and instructed its staff to confirm completion of construction.
11. By memo dated November 28, 1973, Leonard Burtman, Executive Officer, informed the Regional Board members that construction and operation of the waste disposal system was complete and that the discharge beyond lands owned or controlled by Cal-Vine Nursery had been terminated.
12. On December 10, 1974, Regional Board staff inspected Cal-Vine Nursery and noted that wastewater was being discharged beyond the property limits as the result of a failure in the retaining dam from recent rainfall. By letter dated January 8, 1974, Regional Board staff recommended that 100-year, 6-hour storm runoff protection be provided for the waste disposal system.
13. By letter dated August 14, 1974 Cal-Vine Nursery informed Regional Board staff that a water recirculation system was being installed which would drain greenhouse runoff directly to the reservoir and that installation of the system would be completed by November 1, 1974.
14. During November and December, 1974, Regional Board staff performed six inspections of Cal-Vine Nursery and noted discharge of wastewater beyond property limits due to washout of the retaining dam during recent rainfall. By letter dated January 3, 1975 Regional Board staff recommended that 100-year, 6-hour storm runoff protection include protection of all effluent channels and collection system from surface runoff and that a stronger retaining dam be constructed. In addition, Regional Board staff recommended that Cal-Vine Nursery submit a report outlining proposed measures to control wastewater runoff.
15. On December 16, 1977 Regional Board staff inspected Cal-Vine Nursery and noted a low berm on the first collection pond which would be subject to overflow. By letter dated December 16, 1977, Regional Board staff recommended that Cal-Vine Nursery construct berms around the ponds which would provide 100-year flood and runoff protection. In addition, Regional Board staff requested that a report be submitted within 30 days to discuss development and implementation of a plan to achieve 100-year flood and runoff protection.
16. By letter dated January 16, 1978, Cal-Vine Nursery informed Regional Board staff of its intent to develop and implement a plan to achieve 100-year flood and runoff protection.
17. By letter dated August 11, 1978, Cal-Vine Nursery informed Regional Board staff that a drip irrigation system was being installed in each greenhouse which would reduce overall water use and potential runoff beyond the property limits.

18. On August 30, 1978, a meeting between Cal-Vine Nursery and Regional Board staff was held. During the meeting, Cal-Vine Nursery informed Regional Board staff that the installation of the drip irrigation system would be complete by mid-October 1978 and that this system would reduce excess irrigation water runoff from the greenhouses by 50%. Cal-Vine Nursery also informed Regional Board staff that earthwork would be performed prior to the winter season which would divert storm runoff from their wastewater collection and disposal facilities. By letter dated September 11, 1978, Regional Board staff requested that Cal-Vine Nursery notify Regional Board staff in writing when the drip irrigation system installation and earthwork had been completed.
19. By letter dated August 28, 1980, Nasland Engineering transmitted a design of a drainage system for Cal-Vine Nursery which would convey irrigation water runoff from the greenhouses to the percolation basins and prevent stormwater runoff from entering the percolation basins. In addition, the percolation basins would be bermed for 100-year flood protection.
20. In a September 22, 1980 telephone conversation with Cal-Vine Nursery, Regional Board staff approved the above plan submitted by Nasland Engineering and requested that the Cal-Vine Nursery notify Regional Board staff of completion of the construction for a subsequent Regional Board inspection.
21. In an October 28, 1980 telephone conversation, Cal-Vine Nursery notified Regional Board staff that flood protection construction was underway.
22. As a part of the effort to update Order No. 73-14, Regional Board staff performed an inspection of the Cal-Vine Nursery site on March 13, 1986. During the inspection, David Grimshaw, General Manager, Color Spot Foliage Inc., explained that a change in ownership from Cal-Vine Nursery to Color Spot Foliage Inc. occurred in May 1983. Mr. Grimshaw also informed Regional Board staff that excess irrigation water from the greenhouse area is collected in a concrete pipe which drains to a series of three percolation ponds. During the inspection, staff noted that the first pond was "silted in" and did not appear to have adequate flood and runoff protection. Staff explained to Mr. Grimshaw that flood and runoff protection must be provided to ensure that the discharge remains within the property limits of Color Spot Foliage Inc.
23. Color Spot Foliage Inc. is located in the SW1/4 of the SE1/4 of Section 36, T9S, R4W, SDB&M in the Bonsall Hydrographic Subarea of the Bonsall Hydrographic Subunit of the San Luis Rey Hydrographic unit.
24. The *Comprehensive Water Quality Control Plan Report, San Diego Region (9)* (Basin Plan) was adopted by this Regional Board on March 17, 1975; approved by the State Water Resources Control Board on March 20, 1975; and updated by the Regional Board on February 27, 1978, March 23, 1981, January 24 and October 3, 1983; August 27, 1984, and December 16, 1985. The 1978, 1981, 1983, 1984 and 1985 updates were subsequently approved by the State Board.

25. The Basin Plan established the following objectives for ground and surface waters in the Bonsall Hydrographic Subarea.

Constituent	Ground Water		Surface Water	
Total Dissolved Solids	1500	mg/l	500	mg/l
Chloride	500	mg/l	250	mg/l
Percent Sodium	60		60	
Sulfate	500	mg/l	250	mg/l
Nitrate	45	mg/l	---	
Nitrogen and Phosphorus	---		*	
Iron + Manganese	1.0	mg/l	0.35	mg/l
Methylene Blue Active Substances	0.5	mg/l	0.5	mg/l
Boron	0.5	mg/l	0.5	mg/l
Odor	None		None	
Turbidity	5	units	20	units
Color	15	units	20	units
Fluoride	1.0	mg/l	1.0	mg/l

26. The Basin Plan established the following beneficial uses for ground water in the Bonsall Hydrographic Subunit:

- (a) Municipal and Domestic Supply
- (b) Agricultural Supply
- (c) Industrial Service Supply
- (d) Ground Water Recharge

* Concentrations of nitrogen and phosphorus, by themselves or in combination with other nutrients, shall be maintained at levels below those which stimulate algae and emergent plant growth. Threshold total Phosphorus (P) concentrations shall not exceed 0.05 mg/l in any stream at the point where it enters any standing body of water, or 0.025 mg/l in any standing body of water. A desired goal in order to prevent plant nuisances in streams and other flowing waters appears to be 0.1 mg/l total P. These values are not to be exceeded more than 10 percent of the time unless studies of the specific water body in question clearly show that water quality objective changes are permissible and changes are approved by the Regional Board. Analogous threshold values have not been set for nitrogen compounds; however, natural ratios of nitrogen to phosphorus are to be determined by surveillance and monitoring and upheld. If data are lacking, a ratio of N:P = 10:1 shall be used.

Note: mg/l = milligrams per liter

27. The Basin Plan established the following beneficial uses for surface water in the Bonsall Hydrographic Subunit:

- (a) Agricultural Supply
- (b) Industrial Service Supply
- (c) Water Contact Recreation
- (d) Non-Contact Water Recreation
- (e) Warm Fresh Water Habitat
- (f) Wildlife Habitat
- (g) Preservation of Rare and Endangered Species

28. The Basin Plan established the following prohibitions which are applicable to the discharge:

The dumping or deposition of oil, garbage, trash or other solid municipal, industrial or agricultural waste directly into inland waters or watercourses or adjacent to the watercourses, in any manner which may permit its being washed into the watercourse, is prohibited.

Discharge of treated or untreated sewage or industrial waste water, exclusive of cooling water or other waters which are chemically unchanged, to a watercourse for purposes of disposal is prohibited.

Discharging of treated or untreated sewage or industrial waste in such manner or volume as to cause sustained surface flow or ponding on lands not owned or under the control of the discharger is prohibited.

29. The Regional Board, in establishing the requirements contained herein, considered factors including, but not limited to the following:

- (a) Past, present, and probable future beneficial uses of water;
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto;
- (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area;
- (d) Economic consideration;
- (e) The need for developing housing within the region;
- (f) Beneficial uses to be protected and the water quality objectives reasonably required for that purpose; and
- (g) Other waste discharges.

30. The Regional Board has notified the Color Spot Foliage Inc. and all known interested parties of its intent to update the discharge prohibition for Color Spot Foliage Inc.

31. This project is an ongoing project and as such is exempt from the provisions of the California Environmental Quality Act, in accordance with Title 14, California Administrative Code, Article 18, Section 15261.
32. The Regional Board in a public meeting heard and considered all comments pertaining to Color Spot Foliage Inc.

IT IS HEREBY ORDERED, That Color Spot Foliage Inc. in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following:

A. PROHIBITION

1. The discharge of wastewater from Color Spot Foliage Inc. beyond the limits of lands owned or controlled by Color Spot Foliage Inc. (hereinafter discharger) is prohibited.

B. PROVISIONS

1. All waste treatment, containment and disposal facilities (including percolation beds) shall be protected against 100-year peak stream flows as defined by the San Diego County flood control agency.
2. All waste treatment, containment and disposal facilities (including percolation beds) shall be protected against erosion, overland runoff, overflow and other impacts from a 100-year frequency 24-hour storm.
3. Neither the treatment nor the discharge of waste shall create a pollution, contamination, or nuisance as defined by Section 13050 of the California Water Code.
4. The discharger must comply with all conditions of this Order. Any noncompliance with this Order constitutes a violation of the California Water Code and is grounds for (a) enforcement action; (b) termination, revocation and reissuance, or modification of this Order; or (c) denial of a Report of Waste Discharge renewal application.
5. The discharger shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this Order; including such accelerated or additional monitoring as may be necessary to determine the nature and impact of the noncomplying discharge.
6. This Order may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following:
 - (a) Violation of any terms or conditions of this Order;
 - (b) Obtaining this Order by misrepresentation or failure to disclose fully all relevant facts; or
 - (c) A change in any condition that requires either a temporary or permanent action or elimination of the authorized discharge.

The filing of a request by the discharger for modification, revocation and reissuance, or termination of this Order, or a notification of planned change in or anticipated noncompliance with this Order does not stay any condition of this Order.

7. This Order is not transferable to any person except after notice to the Executive Officer of this Regional Board. The Regional Board may require modification or revocation and reissuance of this Order to change the name of the discharger and incorporate such other requirements as may be necessary under the California Water Code. The discharger shall submit notice of any transfer of this Order's responsibility and coverage to a new discharger as described under Reporting Requirement C.3.
8. This Order does not convey any property rights of any sort or any exclusive privileges. The requirements prescribed herein do not authorize the commission of any act causing injury to persons or property of another, nor protect the discharger from his liabilities under federal, state or local laws, nor create a vested right for the discharger to continue his waste discharge.
9. The discharger shall allow the Regional Board, or an authorized representative upon the presentation of credentials and other documents as may be required by law, to:
 - (a) Enter upon the discharger's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Order;
 - (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order;
 - (c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this Order; and
 - (d) Sample or monitor at reasonable times, for the purposes of assuring compliance with this Order or as otherwise authorized by the California Water Code, any substances or parameters at any location.
10. The discharger shall, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the discharger to achieve compliance with the conditions of this Order. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of this Order.
11. In an enforcement action, it shall not be a defense for the discharger that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with this Order. Upon reduction,

loss, or failure of the treatment facility, the discharger shall, to the extent necessary to maintain compliance with this Order, control production or all discharges, or both, until the facility is restored or an alternative method of treatment is provided. This provision applies, for example, when the primary source of power of the treatment facility fails, is reduced, or is lost.

12. A copy of this Order shall be posted at a prominent location at or near the treatment and disposal facilities, and shall be available to operating personnel at all times.
13. The provisions of this Order are severable, and if any provision of this Order, or the application of any provision of this Order to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this Order, shall not be affected thereby.
14. The discharger shall complete the following tasks and submit to Regional Board staff the appropriate report or notification in accordance with the following time schedule:

Task	Completion Date	Report Submittal or Notification Date
Prepare a technical report as described in Reporting Requirement No. C.7 of this Order.	9/16/86	10/1/86
Begin implementation of measures indicated in the submitted technical report as necessary for achieving full compliance with this Order.	11/1/86	11/16/86
Complete work to achieve full compliance with this Order	6/16/87	7/1/87

C. REPORTING REQUIREMENTS

1. The discharger shall file a new Report of Waste Discharge at least 120 days prior to the following:
 - (a) Addition of a major industrial waste discharge of essentially domestic sewage, or the addition of a new process or product by an industrial facility resulting in a change in the character of the wastes.
 - (b) Significant change in disposal method (e.g., change in the method of treatment which would significantly alter the nature of the waste).

- (c) Significant change in the disposal area (e.g., moving the discharge to a disposal area significantly removed from the original area, potentially causing different water quality or a nuisance problem).
 - (d) Other circumstances which result in a material change in character, amount, or location of the waste discharge.
 - (e) Any planned change in the regulated facility or activity which may result in noncompliance with this Order.
2. The discharger must notify the Executive Officer, in writing, at least 30 days in advance of any proposed transfer of this Order's responsibility and coverage to a new discharger. The notice must include a written agreement between the existing and new discharger containing a specific date for the transfer of this Order's responsibility and coverage between the current discharger and the new discharger. This agreement shall include an acknowledgement that the existing discharger is liable for violations up to the transfer date and that the new discharger is liable from the transfer date on.
3. The discharger shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally to the Executive Officer within 24 hours from the time the discharger becomes aware of the circumstances. A written submission shall also be provided within five days of the time the discharger becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The Executive Officer, or an authorized representative may waive the written report on a case-by-case basis if the oral report has been received within 24 hours. The following occurrence(s) must be reported to the Executive Officer within 24 hours:
- (a) Any discharge of treated or untreated wastewater resulting from sewer line breaks, obstruction, surcharge or any other circumstance.
 - (b) Any violation of the prohibitions of this Order.
4. The discharger shall furnish to the Executive Officer, within a reasonable time, any information which the Executive Officer may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order, or to determine compliance with this Order. The discharger shall also furnish to the Executive Officer, upon request, copies of records required to be kept by this Order.
5. Where the discharger becomes aware that they failed to submit any relevant facts in a Report of Waste Discharge, or submitted incorrect information in a Report of Waste Discharge, or in any report to the Regional Board, they shall promptly submit such facts or information.

6. All applications, reports, or information submitted to the Executive Officer of this Regional Board shall be signed and certified.

(a) The Report of Waste Discharge shall be signed as follows:

- (1) *For a corporation* - by a principal executive officer of at least the level of vice-president.
- (2) *For a partnership or sole proprietorship* - by a general partner or the proprietor, respectively.
- (3) *For a municipality, state, federal or other public agency* - by either a principal executive officer or ranking elected official.

(b) All other reports required by this Order and other information requested by the Executive Officer shall be signed by a person designated in paragraph (a) of this provision, or by a duly authorized representative of that person. An individual is a duly authorized representative only if:

- (1) The authorization is made in writing by a person described in paragraph (a) of this provision;
- (2) The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and
- (3) The written authorization is submitted to the Executive Officer.

(c) Any person signing a document under this Section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

7. A report certifying the adequacy of each component of the waste disposal system shall be submitted by the discharger in accordance with the time schedule contained in Provision B.14. This certification report shall address items (a) through (d) below and shall be written by a registered engineer. The engineer shall affix his/her signature and engineering license number to this certification report.

- (a) A description of measures which have been and/or which need to be taken to comply with Provision B.1, which requires the protection of waste treatment and disposal facilities against a 100-year peak stream flow.
 - (b) A description of measures which have been and/or which need to be taken to demonstrate compliance with Provision number B.2, which requires the protection of waste treatment and disposal facilities against erosion and runoff from a 100-year frequency 24-hour storm.
 - (c) A description of measures which have been and/or which need to be taken to provide sufficient storage capacity to contain all wastewater and prevent discharges beyond the limits of lands owned and controlled by Color Spot Foliage Inc.
 - (d) A description of any and all other measures which have been and/or which need to be taken to comply with requirements of this Order.
8. The discharger shall submit reports required under this Order to the:

Executive Officer
California Regional Water Quality Control Board
San Diego Region
6154 Mission Gorge Road, Suite 205
San Diego, California 92120

D. NOTIFICATIONS

1. These requirements have not been officially reviewed by the United State Environmental Protection Agency and are not issued pursuant to Section 402 of the Clean Water Act.
2. The California Water Code provides that any person who intentionally or negligently violates any waste discharge requirements issued, reissued, or amended by this Regional Board is subject to a civil monetary remedy of up to 20 dollars per gallon of waste discharged or up to 15,000 dollars per day of violation or some combination thereof.
3. The California Water Code provides that any person failing or refusing to furnish technical or monitoring program reports, as required under this Order, or falsifying any information provided in the monitoring reports is guilty of a misdemeanor.
4. Order No. 73-14 is rescinded when this Order becomes effective.

I, Ladin H. Delaney, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on June 16, 1986.

Ladin H. Delaney
Ladin H. Delaney
Executive Officer